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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/816,850

04/05/2004

William W. Keller

119544-00101

3133

27557

7590

02/22/2007

BLANK ROME LLP

600 NEW HAMPSHIRE AVENUE, N.W.

WASHINGTON, DC 20037

EXAMINER

SAYALA, CHHAYA D

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/816,850

Applicant(s)

KELLER ET AL.

Examiner

C. SAYALA

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2007.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-14 and 16-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3, 5-14, 16-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/10/2007 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 3, 5-9, 14, 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 474992.

The patent teaches adding lignosulfonate and calcium carbonate to poultry manure to obtain a fertilizer. The amount of manure is 30-60%, lignosulfonate is 1-20% and limestone is 0-40%. The phosphate content in the final product is given as 0-20%. The newly added limitation of total nitrogen content and phosphorus content would have been inherent in the final product, because the amounts of poultry manure, limestone

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and binder fall within the same range and therefore, the phosphate content and the nitrogen content must be the same in the final product.

2. Claims 1, 3, 8-9, 14 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ethington Jr. et al. (US Patent 6726941).

The disclosure of Ethington anticipates these claims since the patent shows mixing dried poultry waste, lignosulfonate and dolomitic limestone. See claims 3, 29; col. 9, lines 35+, col. 18, line 47, col. 19, line 23. The newly added limitation of total nitrogen content and phosphorus content would have been inherent, because the reference is doing the same thing that the claims herein recite, which is to combine limestone and binder with the same poultry manure must be the same in the end product.

3. Claims 1-2, 8-13 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Connell (US Patent 6461399).

The patentee teaches using poultry manure (col. 4, line 60), treating it with calcium carbonate (col. 4, lines 6 and 8), and grinding and blending the two. Col. 4, lines 38-40. A binder, lignin sulfonate is also used to make a prilled product (col. 7, lines 37-65). Note figures 2 and 3, which show the raw product is fed into a drier to reduce the moisture content (col. 7, lines 41-43). Note the screening step at col. 8, line 10+. Dolomitic limestone is said to be the most common form available and used (col. 4, lines 10-20). The newly added limitation of total nitrogen content and phosphorus

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content would have been inherent, because the reactants are the same, which is, mixing poultry manure, limestone and binder together and therefore would result in the same. Although the patent adds acids, which are any of a short list of acids including nitric, carbonic, citric, fulvic, etc. these are not excluded by the claims.

### ***Response to arguments***

Applicant's arguments filed 1/10/07 have been fully considered but they are not persuasive.

With regard to the EP patent, Ethington et al. and Connell, applicant states that the patent fails to disclose the N and P content as claimed. Applicant states that his process lowers the phosphate content and maintains the high nitrogen content. A review of the specification reveals that applicant achieves this by combining calcium carbonate, a binder and poultry manure. Since the reference combines the same, then the same result ensues. Applicant states that the examiner must provide a basis in fact or technical reasoning to support the inherency determination. In response, it is well settled that a patent cannot be properly granted for [an invention] which would flow naturally from the teaching of the prior art. *American Infra-Red Radiant Co. v Lambert Indus., Inc.*, 360 F.2d 977, 986 [149 USPQ 722 (CCPA 1958)], (8th Cir.) (quoting *Application of Libby*, 255 F.2d 412 [118 USPQ 194 (CCPA 1958)], *CERT. DENIED*, 385 U.S. 920 [151 USPQ 757](1966).

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On page 7, applicant states that nitrogen will evaporate during processing. In response, if it does then the same must be the case in the reference process as well.

The declaration has been carefully reviewed and the showing that the nitrogen content of raw poultry litter is higher than the final product because of the loss of ammonia during processing is noted. However, the position that if this loss has occurred, then the same loss must have occurred in the reference product as well remains unchanged, since applicant provides no reason why this should not be the case. Furthermore, applicant has chosen to describe his product with physical characteristics that are beyond measurement by this Office and as a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith. See *In re Brown*, 59 CCPA 1036, 459 F.2d 531, 173 USPQ 685 (1972) at 59 CCPA 1041.

The traversal of the remaining rejections is moot, with the withdrawal of these rejections.

### ***Conclusion***

This is a continuation of applicant's earlier Application of the same Serial No. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they

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had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

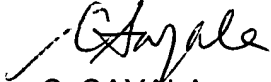
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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "C. Sayala", is positioned above the printed name.

C. SAYALA  
Primary Examiner  
Group 1700.